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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,193	07/18/2003	Brad S. Culbert	TRIAGE.021A	2665
20995 7590 07/22/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER RAMANA, ANURADHA				
ART UNIT		PAPER NUMBER		
3775				
NOTIFICATION DATE		DELIVERY MODE		
07/22/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
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Office Action Summary

Application No.

10/623,193

Applicant(s)

CULBERT ET AL.

Examiner

Anu Ramana

Art Unit

3775

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18, 23, 26, 27, 33-41, 43, 44, 46, 50-59 and 61-72 is/are pending in the application.
- 4a) Of the above claim(s) 27 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45, 47-49 and 60 is/are allowed.
- 6) ☒ Claim(s) 18, 23, 27, 33-41, 43, 44, 46, 50-59 and 61-72 is/are rejected.
- 7) ☒ Claim(s) 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 27, 2009 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 18, 23, 33-41, 43-44, 46, 50-59 and 61-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ray (US 5,527,312) in view of Pepper et al. (US 5,989,255).

Ray discloses a method of providing spinal fixation including the steps of: providing a fixation device 40 and a screw 30 wherein the screw is advanced through a first vertebra and into the pedicle of a second vertebra (Fig. 1, col. 2, lines 26-67 and col. 3, lines 1-47).

Ray discloses all elements of the claimed invention except for: a fixation member having a proximal anchor with a slip ring that is advanced distally over retention structures on the body of the fixation member and wherein a second portion of the fixation member is separated and removed from the first portion of the fixation member after the proximal anchor is advanced distally along the fixation device.

Pepper et al. teach a screw including: a first portion 18 that forms a bone anchor; a second portion 13A that forms a proximal end; and wherein the first and second portions are detachably coupled to one another at a junction, i.e., the plane along which second portion 13A is separated from the first portion; and a proximal anchor including a washer or "slip ring" 26 that is advanced distally over retention structures on the body of the screw (Figs. 1-3, col. 3, lines 66-67, cols. 4 and 5).

Regarding claims 34 and 64, Pepper et al. teach a proximal portion having flats 19 and 20 that engage a drill chuck 21.

Regarding claims 39-41, 54-56 and 69-71, it is noted that the length of the fixation device used is a function of the thickness of the underlying bone tissue.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted the bone screw of Ray with the screw as, for example, taught by Pepper et al. wherein so doing would amount to mere substitution of one functionally equivalent fixation device for another within the same art and the selection of any of these fixation devices would work equally well in the Ray device.

The claimed method steps are rendered obvious by the above discussion.

Response to Arguments

Applicant's arguments submitted under "REMARKS" in the response filed on April 27, 2009 have been considered but are not persuasive for the following reason.

As previously stated, it is the Examiner's position that Ray discloses advancing a bone anchor through the facet joint into the base of a transverse process of a vertebra (Fig. 1 and col. 1, lines 52-63). The insertion step disclosed by Ray requires at least a portion of the bone anchor to be situated within the pedicle of a vertebra. Further, the use of the transitional phrase "comprising" in Applicant's claimed method steps does not preclude additional steps such as a laminectomy. Thus, Applicant's claimed invention is rendered obvious by the combination of Ray and Pepper et al.

Allowable Subject Matter

Claim 26 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 45, 47-49 and 60 are allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached at (571) 272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR
July 15, 2009

/Anu Ramana/
Primary Examiner, Art Unit 3775